

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Squad #4	CCRB Case #: 201510149	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/27/2015 7:00 PM	Location of Incident: Osborn Street and Riverdale Avenue	Precinct: 73	18 Mo. SOL 5/27/2017	EO SOL 5/27/2017	
Date/Time CV Reported Mon, 11/30/2015 3:10 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/30/2015 3:10 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gamalier Baez	20302	932287	073 PCT
2. POF Sheena Lawrence	18085	945909	073 PCT
3. POM Marlon Sanchez	23417	951199	073 PCT
4. Officers			073 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Gamalier Baez	Abuse: PO Gamalier Baez frisked § 87(2)(b)	
C.POM Gamalier Baez	Abuse: PO Gamalier Baez searched § 87(2)(b)	
D.POM Gamalier Baez	Abuse: PO Gamalier Baez searched the vehicle in which § 87(2)(b) was an occupant.	
E.POM Marlon Sanchez	Abuse: PO Marlon Sanchez refused to provide his name and shield number to § 87(2)(b)	
F.POF Sheena Lawrence	Abuse: PO Sheena Lawrence refused to provide her name and shield number to § 87(2)(b)	

Case Summary

On November 27, 2015, in the vicinity of Osborn Street and Riverdale Avenue, in the Bronx, § 87(2)(b) was pulled over by PO Marlon Sanchez, PO Gamalier Baez, and PO Sheena Lawrence of the 73rd Precinct (**Allegation A**). PO Sanchez approached the driver's side window of the vehicle and when asked, informed § 87(2)(b) that he had been driving a little fast on Mother Gaston Avenue (approximately a block away from the stop location). Officers also stated that § 87(2)(b)'s windows were tinted.

During the interaction, PO Sanchez asked § 87(2)(b) to roll down his passenger's side window, so his partner, PO Baez could also hear what was going on, but § 87(2)(b) refused. PO Sanchez also stated aloud to § 87(2)(b) that he was trembling. PO Sanchez then asked § 87(2)(b) to step out of his vehicle. § 87(2)(b) asked if he was being detained, and PO Sanchez did not answer but again asked § 87(2)(b) to step out of the vehicle. § 87(2)(b) continued to ask if he was being detained, and PO Sanchez responded by asking him to step out of the vehicle several times, until PO Baez ultimately stated to § 87(2)(b) "Yes you are being detained." § 87(2)(b) then stepped out of his vehicle and PO Baez allegedly frisked and searched § 87(2)(b)'s pants pockets (**Allegations B and C**).

§ 87(2)(b) was then escorted to the rear of his vehicle where he stood with PO Sanchez and PO Lawrence. While he was at the rear of the vehicle, PO Baez allegedly searched § 87(2)(b)'s vehicle (**Allegation D**). At the time of the vehicle search, § 87(2)(b) allegedly requested both PO Sanchez's and PO Lawrence's names and shield numbers and they did not provide it (**Allegations E and F**).

§ 87(2)(b) returned to his driver's seat, and was released without a summons or arrest.

Video Footage

§ 87(2)(b) provided the investigation video footage that he personally took from his phone at the time of this incident. Relevant clips from the footage are attached within the analysis section below. The video is attached to Board Review 01 and a transcript of the verbal interaction can be located in Board Review 02.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation as an alternative resolution to this complaint.
- A notice of claim inquiry was sent to the New York City Comptroller's office. A response to this inquiry will be included in the case file upon its receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b)

§ 87(2)(b)

- PO Baez has been a member of the service for 12 years and there are no substantiated CCRB allegations against him. § 87(2)(g)
- PO Sanchez has been a member of the service for four years and this is the first complaint filed against him.
- PO Lawrence has been a member of the service for eight years, and this is the first CCRB complaint filed against her.

Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

§ 87(2)(g)

Allegation A –Abuse of Authority: Officers stopped the vehicle in which § 87(2)(b) was an occupant.

As discussed in the allegations not pleaded section, the investigation determined that PO Baez, PO Sanchez and PO Lawrence, of the 73rd Precinct, pulled over § 87(2)(b)'s vehicle in the vicinity of Osborn Avenue and Riverdale Avenue, in the Bronx. It is undisputed that § 87(2)(b) was released without being arrested or issued a summons for any violation, vehicle or otherwise.

§ 87(2)(b) stated that he did not commit any VTL violations, including vehicle equipment related offenses, prior to being stopped. However, all three officers interviewed were consistent that the motivation for the vehicle stop was two-fold: (1) § 87(2)(b) was speeding on Mother Gaston Avenue, a block from the incident location, and (2) that § 87(2)(b)'s windows were illegally tinted. The officers' memo books corroborated these two alleged offenses.

However the video evidence, provided by § 87(2)(b) shows that § 87(2)(b)'s side windows were significantly tinted, making it difficult to see inside of the vehicle. According to PO Baez, based on his experience and training, these tints were beyond the state limit.

§ 87(2)(g)

According to New York State Vehicle and Traffic Law 375 (12-a), No person shall operate a motor vehicle upon any public highway, road or street equipped with sidewings or side windows of which either side forward or adjacent to the operator's seat of which is comprised of,

covered by or treated with any material which has a light transmittance of less than seventy percent. (Board Review 04)

§ 87(2)(g)

§ 87(2)(g)

Allegation B- Abuse of Authority: PO Gamalier Baez frisked § 87(2)(b)

Allegation C- Abuse of Authority: PO Gamalier Baez searched § 87(2)(b)

It is undisputed that while PO Sanchez was speaking to § 87(2)(b) at the driver's side window, § 87(2)(b) refused to lower his passenger's side window for PO Baez. § 87(2)(b) (Board Review 05) stated that he did not wish to lower the window because he was speaking to the officer on the driver's side of the vehicle. As already established, § 87(2)(b) was stopped for having excessive tints on his window, and PO Baez (Board Review 06) testified that he could not see inside the vehicle whatsoever from outside the closed passenger's side window. § 87(2)(b) § 87(2)(b) alleged that PO Sanchez and PO Baez ordered him out of his vehicle, and PO Baez frisked him and searched his pants pockets.

PO Baez admitted to frisking § 87(2)(b) though denies searching him. PO Sanchez and PO Lawrence denied witnessing the frisk or alleged search of § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

Police officers may frisk passengers in a lawfully stopped vehicle to the extent necessary to guard their safety, provided that they act on reasonable suspicion that criminal activity is afoot and on an articulable basis to fear for [their] own safety. People v. Goodson 85 A.D.3d 1569 (App. Div. 2011) (Board Review 04)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D- Abuse of Authority: PO Gamalier Baez searched the vehicle in which
§ 87(2)(b) **was an occupant.**

§ 87(2)(g)

It is undisputed that no weapon was discovered on § 87(2)(b) at any point, and he was brought to the rear of the vehicle, where he interacted with PO Sanchez and PO Lawrence.

During the portion of the incident, where § 87(2)(b) was at the rear of the vehicle, he alleged that he observed a portion of PO Baez's body inside his vehicle, as if he was looking inside.

PO Baez admitted that after § 87(2)(b) was brought to the rear of the vehicle, he looked at § 87(2)(b)'s driver's seat from the outside of the vehicle and then entered from the passenger's side of the vehicle to look around the passenger's side seat. PO Lawrence and PO Sanchez both stated that their attention was focused on § 87(2)(b) and they did not know if PO Baez searched § 87(2)(b)'s vehicle.

The video footage for this incident briefly captures PO Baez looking inside § 87(2)(b)'s vehicle from the driver's side of the vehicle, but then the camera faces PO Sanchez and PO Lawrence at the rear of the vehicle for several minutes until PO Baez tells him to return to his vehicle. The video never captures PO Baez inside § 87(2)(b)'s vehicle § 87(2)(g)

§ 87(2)(g)

A police officer acting on reasonable suspicion that criminal activity is afoot and on an articulable basis to fear for his own safety may intrude upon the person or personal effects of the suspect only to the extent that it is actually necessary to protect himself from harm. Absent probable cause, it is unlawful for a police officer to invade the interior of a stopped car once the suspects have been removed and patted down without incident, and any immediate threat to safety thereby eliminated. People v. Carvey 89 N.Y.2d 707 (1997) (Board Review 04)

§ 87(2)(g)

§ 87(2)(g)

Allegation E- Abuse of Authority: PO Marlon Sanchez refused to provide his shield number to § 87(2)(b)

Allegation F- Abuse of Authority: PO Sheena Lawrence refused to provide her shield number to § 87(2)(b)

§ 87(2)(b) stated that he asked both PO Lawrence and PO Sanchez for their "badge numbers." Video for this incident captures § 87(2)(b) stating, "I'm going to need your badge numbers," while in the presence of PO Sanchez and PO Lawrence. However, neither of them provided their shield numbers to § 87(2)(b)

PO Lawrence (Board Review 07) stated that she did not provide her shield number to § 87(2)(b) because he never asked her for her name or shield number at any point. Even after reviewing the video, PO Lawrence maintained that § 87(2)(b) requested only PO Sanchez's information. The video contradicts PO Lawrence's statement that § 87(2)(b)'s request was made to only PO Sanchez since he says "badge numbers." The video also shows PO Lawrence looking at § 87(2)(b) while the request was made.

PO Sanchez (Board Review 08) acknowledged that § 87(2)(b) stated that he was going to need his shield number, though stated that he did not directly request that information. PO Sanchez stated that at that point, § 87(2)(b) already had his name, because he provided it at the beginning of the interaction, but also stated that he was cut off by § 87(2)(b) before providing his full last name. The video captures PO Sanchez stating at the beginning of the interaction, “How you doing, Police officer Sanch-” It does not capture § 87(2)(b) interrupting his name, but instead captures PO Sanchez himself interrupting that sentence with, “Can I see your license?”

PO Sanchez did not recall if he provided his shield number after § 87(2)(b) requested it. The video shows that he did not.



2016-02-17_18-40-38.mp4

Pursuant to NYPD Patrol Guide Procedure 203-09, officers are required to courteously and clearly state their name, rank, shield number, and command, or otherwise provide them, to anyone who requests you to do so, and allow the person ample time to note this information. (Board Review 04).

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Squad: 4

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date